

AMENDED IN ASSEMBLY MAY 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1610**

**Introduced by Assembly Member Wolk**

February 22, 2005

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An act to amend Sections ~~33054, 47605, 47605~~ and 47612.5 of, and to add Section 47612.6 to, the Education Code, relating to charter schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 1610, as amended, Wolk. Charter schools.

~~(1) Existing law, the Charter Schools Act of 1992, requires a charter school to comply with the provisions of its charter and the laws pertaining to charter schools and exempts charter schools from the laws governing school districts, with specified exceptions. Existing law authorizes the governing board of a charter school to request, and the State Board of Education to approve, a waiver of any otherwise applicable provisions of law until July 1, 2005, with certain requirements.~~

~~Existing law requires a charter school to meet the same criteria that a school district is required to meet when it requests a waiver, except that the chartering authority is required to conduct a public hearing no later than 90 days following receipt of the waiver request, and requires the charter school to hold a public hearing prior to submitting the waiver request directly to the State Board of Education if the chartering authority fails to hold its public hearing within the time required.~~

~~This bill would require a charter school to simultaneously submit a waiver application to its chartering authority and the State Board of Education, thereby creating a state-mandated local program. The bill~~

~~would delete the requirement that the chartering authority conduct a public hearing within 90 days of the receipt of the waiver, and would instead provide that a chartering authority may hold a public hearing and make a recommendation on the waiver within 30 days of the receipt of the request.~~

~~The bill would require the State Department of Education to contact the charter school to determine if there are objections to the waiver request, with certain requirements. The bill would extend the operation of these provisions indefinitely.~~

~~(2) Existing law, the *Charter Schools Act of 1992*, permits teachers, parents, pupils, and community members to petition the governing board of a school district to approve a charter school to operate independently from the existing school district structure as a method of accomplishing, among other things, improved pupil learning.~~

~~The bill would require a charter school to notify and, *upon request*, provide the district of residence of a pupil who is expelled or leaves the charter school without graduating or completing the school year for any reason with a copy of the cumulative record of that pupil, thereby creating a state-mandated local program.~~

~~(3)–~~

~~(2) Existing law requires a charter school to offer, at a minimum, a specified number of minutes of instruction for the appropriate age levels, to maintain written, contemporaneous records that document all pupil attendance, and to make these records available for audit and inspection.~~

~~This bill would prohibit the State Board of Education or the Superintendent of Public Instruction from waiving these requirements, but would permit the waiver of fiscal penalties incurred due to such a violation, with certain requirements.~~

~~(4)–~~

~~(3) This bill would also make various technical, nonsubstantive changes to existing law.~~

~~(5)–~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,~~

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 33054 of the Education Code is~~  
2     ~~amended to read:~~

3     ~~33054. (a) The governing board of a charter school may~~  
4     ~~request, and the State Board of Education may approve, a waiver~~  
5     ~~of any otherwise applicable provisions of this code pursuant to~~  
6     ~~this article. To be eligible to request a waiver, a charter school~~  
7     ~~shall simultaneously submit its application for a waiver to its~~  
8     ~~chartering authority, the department, and the State Board of~~  
9     ~~Education. The governing board of the chartering authority may~~  
10    ~~hold a public hearing and make a recommendation on the waiver~~  
11    ~~request no later than 30 days following receipt of the request.~~  
12    ~~The department shall contact the chartering authority to~~  
13    ~~determine if there exist objections to the waiver request and shall~~  
14    ~~summarize any objections to the State Board of Education prior~~  
15    ~~to its decision on whether to grant that waiver request.~~

16    ~~(b) For purposes of this article, a charter school shall be~~  
17    ~~deemed to be a "school district" that is eligible to submit a~~  
18    ~~waiver application pursuant to this section.~~

19    ~~(c) A charter school shall meet the same criteria that a school~~  
20    ~~district is required to meet when it requests a waiver~~

21    ~~:~~

22    ~~SEC. 2.~~

23    ~~SECTION 1. Section 47605 of the Education Code is~~  
24    ~~amended to read:~~

25    ~~47605. (a) (1) Except as set forth in paragraph (2), a petition~~  
26    ~~for the establishment of a charter school within any school~~  
27    ~~district may be circulated by any one or more persons seeking to~~  
28    ~~establish the charter school. A petition for the establishment of a~~  
29    ~~charter school shall identify a single charter school that will~~  
30    ~~operate within the geographic boundaries of that school district.~~  
31    ~~A charter school may propose to operate at multiple sites within~~  
32    ~~the school district, as long as each location is identified in the~~  
33    ~~charter school petition. The petition may be submitted to the~~

governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) A petition that proposes to convert an existing public school to a charter school that would not be eligible for a loan pursuant to subdivision (b) of Section 41365 may be circulated by any one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites shall request a material revision to its charter and shall notify the authority that granted its charter of those additional locations. The authority that granted its charter shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved, they shall be a material revision to the charter school's charter.

(5) Notwithstanding subdivision (a), a charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district within whose jurisdiction the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of

1 schools and the Superintendent are notified of the location of the  
2 charter school before it commences operations, and either of the  
3 following circumstances exist:

4 (A) The school has attempted to locate a single site or facility  
5 to house the entire program, but a site or facility is unavailable in  
6 the area in which the school chooses to locate.

7 (B) The site is needed for temporary use during a construction  
8 or expansion project.

9 (6) Commencing January 1, 2003, a petition to establish a  
10 charter school may not be approved to serve pupils in a grade  
11 level that is not served by the school district of the governing  
12 board considering the petition, unless the petition proposes to  
13 serve pupils in all of the grade levels served by that school  
14 district.

15 (b) No later than 30 days after receiving a petition, in  
16 accordance with subdivision (a), the governing board of the  
17 school district shall hold a public hearing on the provisions of the  
18 charter, at which time the governing board of the school district  
19 shall consider the level of support for the petition by teachers  
20 employed by the district, other employees of the district, and  
21 parents. Following review of the petition and the public hearing,  
22 the governing board of the school district shall either grant or  
23 deny the charter within 60 days of receipt of the petition,  
24 provided, however, that the date may be extended by an  
25 additional 30 days if both parties agree to the extension. In  
26 reviewing petitions for the establishment of charter schools  
27 pursuant to this section, the chartering authority shall be guided  
28 by the intent of the Legislature that charter schools are and  
29 should become an integral part of the California educational  
30 system and that establishment of charter schools should be  
31 encouraged. A school district governing board shall grant a  
32 charter for the operation of a school under this part if it is  
33 satisfied that granting the charter is consistent with sound  
34 educational practice. The governing board of the school district  
35 shall not deny a petition for the establishment of a charter school  
36 unless it makes written factual findings, specific to the particular  
37 petition, setting forth specific facts to support one or more of the  
38 following findings:

39 (1) The charter school presents an unsound educational  
40 program for the pupils to be enrolled in the charter school.

1 (2) The petitioners are demonstrably unlikely to successfully  
2 implement the program set forth in the petition.

3 (3) The petition does not contain the number of signatures  
4 required by subdivision (a).

5 (4) The petition does not contain an affirmation of each of the  
6 conditions described in subdivision (d).

7 (5) The petition does not contain reasonably comprehensive  
8 descriptions of all of the following:

9 (A) (i) A description of the educational program of the school,  
10 designed, among other things, to identify those whom the school  
11 is attempting to educate, what it means to be an “educated  
12 person” in the 21st century, and how learning best occurs. The  
13 goals identified in that program shall include the objective of  
14 enabling pupils to become self-motivated, competent, and  
15 lifelong learners.

16 (ii) If the proposed school will serve high school pupils, a  
17 description of the manner in which the charter school will inform  
18 parents about the transferability of courses to other public high  
19 schools and the eligibility of courses to meet college entrance  
20 requirements. Courses offered by the charter school that are  
21 accredited by the Western Association of Schools and Colleges  
22 may be considered transferable and courses approved by the  
23 University of California or the California State University as  
24 creditable under the “A” to “G” admissions criteria may be  
25 considered to meet college entrance requirements.

26 (B) The measurable pupil outcomes identified for use by the  
27 charter school. “Pupil outcomes,” for purposes of this part,  
28 means the extent to which all pupils of the school demonstrate  
29 that they have attained the skills, knowledge, and attitudes  
30 specified as goals in the school’s educational program.

31 (C) The method by which pupil progress in meeting those  
32 pupil outcomes is to be measured.

33 (D) The governance structure of the school, including, but not  
34 limited to, the process to be followed by the school to ensure  
35 parental involvement.

36 (E) The qualifications to be met by individuals to be employed  
37 by the school.

38 (F) The procedures that the school will follow to ensure the  
39 health and safety of pupils and staff. These procedures shall  
40 include the requirement that each employee of the school furnish

1 the school with a criminal record summary as described in  
2 Section 44237.

3 (G) The means by which the school will achieve a racial and  
4 ethnic balance among its pupils that is reflective of the general  
5 population residing within the territorial jurisdiction of the school  
6 district to which the charter petition is submitted.

7 (H) Admission requirements, if applicable.

8 (I) The manner in which annual, independent, financial audits  
9 shall be conducted, which shall employ generally accepted  
10 accounting principles, and the manner in which audit exceptions  
11 and deficiencies shall be resolved to the satisfaction of the  
12 chartering authority.

13 (J) The procedures by which pupils can be suspended or  
14 expelled.

15 (K) The manner by which staff members of the charter schools  
16 will be covered by the State Teachers' Retirement System, the  
17 Public Employees' Retirement System, or federal social security.

18 (L) The public school attendance alternatives for pupils  
19 residing within the school district who choose not to attend  
20 charter schools.

21 (M) A description of the rights of any employee of the school  
22 district upon leaving the employment of the school district to  
23 work in a charter school, and of any rights of return to the school  
24 district after employment at a charter school.

25 (N) The procedures to be followed by the charter school and  
26 the entity granting the charter to resolve disputes relating to  
27 provisions of the charter.

28 (O) A declaration whether or not the charter school shall be  
29 deemed the exclusive public school employer of the employees  
30 of the charter school for the purposes of the Educational  
31 Employment Relations Act (Chapter 10.7 (commencing with  
32 Section 3540) of Division 4 of Title 1 of the Government Code).

33 (P) A description of the procedures to be used if the charter  
34 school closes. The procedures shall ensure a final audit of the  
35 school to determine the disposition of all assets and liabilities of  
36 the charter school, including plans for disposing of any net assets  
37 and for the maintenance and transfer of pupil records.

38 (c) (1) Charter schools shall meet all statewide standards and  
39 conduct the pupil assessments required pursuant to Section  
40 60605 and any other statewide standards authorized in statute or

1 pupil assessments applicable to pupils in noncharter public  
2 schools.

3 (2) Charter schools shall, on a regular basis, consult with their  
4 parents, guardians, and teachers regarding the school's  
5 educational programs.

6 (d) (1) In addition to any other requirement imposed under  
7 this part, a charter school shall be nonsectarian in its programs,  
8 admission policies, employment practices, and all other  
9 operations, shall not charge tuition, and shall not discriminate  
10 against any pupil on the basis of ethnicity, national origin,  
11 gender, or disability. Except as provided in paragraph (2),  
12 admission to a charter school shall not be determined according  
13 to the place of residence of the pupil, or of his or her parent or  
14 guardian, within this state, except that any existing public school  
15 converting partially or entirely to a charter school under this part  
16 shall adopt and maintain a policy giving admission preference to  
17 pupils who reside within the former attendance area of that  
18 public school.

19 (2) (A) A charter school shall admit all pupils who wish to  
20 attend the school.

21 (B) However, if the number of pupils who wish to attend the  
22 charter school exceeds the school's capacity, attendance, except  
23 for existing pupils of the charter school, shall be determined by a  
24 public random drawing. Preference shall be extended to pupils  
25 currently attending the charter school and pupils who reside in  
26 the district except as provided for in Section 47614.5. Other  
27 preferences may be permitted by the chartering authority on an  
28 individual school basis and only if consistent with the law.

29 (C) In the event of a drawing, the chartering authority shall  
30 make reasonable efforts to accommodate the growth of the  
31 charter school and, in no event, shall take any action to impede  
32 the charter school from expanding enrollment to meet pupil  
33 demand.

34 (3) If a pupil is expelled or leaves the charter school without  
35 graduating or completing the school year for any reason, the  
36 charter school shall notify the superintendent of the school  
37 district in which the pupil resides within ~~14~~ 30 days, and shall  
38 provide, *upon request*, that school district with a copy of the  
39 cumulative record of the pupil, including a transcript of grades or  
40 report card, and health information. This paragraph applies only

1 to pupils subject to compulsory full-time education pursuant to  
2 Section 48200.

3 (e) The governing board of a school district shall not require  
4 any employee of the school district to be employed in a charter  
5 school.

6 (f) The governing board of a school district shall not require  
7 any pupil enrolled in the school district to attend a charter school.

8 (g) The governing board of a school district shall require that  
9 the petitioner or petitioners provide information regarding the  
10 proposed operation and potential effects of the school, including,  
11 but not limited to, the facilities to be utilized by the school, the  
12 manner in which administrative services of the school are to be  
13 provided, and potential civil liability effects, if any, upon the  
14 school and upon the school district. The description of the  
15 facilities to be used by the charter school shall specify where the  
16 school intends to locate. The petitioner or petitioners shall also be  
17 required to provide financial statements that include a proposed  
18 first-year operational budget, including startup costs, and  
19 cashflow and financial projections for the first three years of  
20 operation.

21 (h) In reviewing petitions for the establishment of charter  
22 schools within the school district, the school district governing  
23 board shall give preference to petitions that demonstrate the  
24 capability to provide comprehensive learning experiences to  
25 pupils identified by the petitioner or petitioners as academically  
26 low achieving pursuant to the standards established by the  
27 department under Section 54032.

28 (i) Upon the approval of the petition by the governing board of  
29 the school district, the petitioner or petitioners shall provide  
30 written notice of that approval, including a copy of the petition,  
31 to the applicable county superintendent of schools, the  
32 department, and the State Board of Education.

33 (j) (1) If the governing board of a school district denies a  
34 petition, the petitioner may elect to submit the petition for the  
35 establishment of a charter school to the county board of  
36 education. The county board of education shall review the  
37 petition pursuant to subdivision (b). If the petitioner elects to  
38 submit a petition for establishment of a charter school to the  
39 county board of education and the county board of education  
40 denies the petition, the petitioner may file a petition for

1 establishment of a charter school with the State Board of  
2 Education, and the state board may approve the petition, in  
3 accordance with subdivision (b). Any charter school that receives  
4 approval of its petition from a county board of education or from  
5 the State Board of Education on appeal shall be subject to the  
6 same requirements concerning geographic location that it would  
7 otherwise be subject to if it receives approval from the entity to  
8 whom it originally submits its petition. A charter petition that is  
9 submitted to either a county board of education or to the State  
10 Board of Education shall meet all otherwise applicable petition  
11 requirements, including the identification of the proposed site or  
12 sites where the charter school will operate.

13 (2) In assuming its role as a chartering agency, the State Board  
14 of Education shall develop criteria to be used for the review and  
15 approval of charter school petitions presented to the State Board  
16 of Education. The criteria shall address all elements required for  
17 charter approval, as identified in subdivision (b) and shall define  
18 “reasonably comprehensive” as used in paragraph (5) of  
19 subdivision (b) in a way that is consistent with the intent of this  
20 part. Upon satisfactory completion of the criteria, the State Board  
21 of Education shall adopt the criteria on or before June 30, 2001.

22 (3) A charter school for which a charter is granted by either  
23 the county board of education or the State Board of Education  
24 based on an appeal pursuant to this subdivision shall qualify fully  
25 as a charter school for all funding and other purposes of this part.

26 (4) If either the county board of education or the State Board  
27 of Education fails to act on a petition within 120 days of receipt,  
28 the decision of the governing board of the school district, to deny  
29 a petition shall, thereafter, be subject to judicial review.

30 (5) The State Board of Education shall adopt regulations  
31 implementing this subdivision.

32 (6) Upon the approval of the petition by the county board of  
33 education, the petitioner or petitioners shall provide written  
34 notice of that approval, including a copy of the petition to the  
35 department and the State Board of Education.

36 (k) (1) The State Board of Education may, by mutual  
37 agreement, designate its supervisory and oversight  
38 responsibilities for a charter school approved by the State Board  
39 of Education to any local education agency in the county in

1 which the charter school is located or to the governing board of  
2 the school district that first denied the petition.

3 (2) The designated local education agency shall have all  
4 monitoring and supervising authority of a chartering agency,  
5 including, but not limited to, powers and duties set forth in  
6 Section 47607, except the power of revocation, which shall  
7 remain with the State Board of Education.

8 (3) A charter school that has been granted its charter through  
9 an appeal to the State Board of Education and elects to seek  
10 renewal of its charter shall, prior to expiration of the charter,  
11 submit its petition for renewal to the governing board of the  
12 school district that initially denied the charter. If the governing  
13 board of the school district denies the school's petition for  
14 renewal, the school may petition the State Board of Education for  
15 renewal of its charter.

16 (l) Teachers in charter schools shall hold a Commission on  
17 Teacher Credentialing certificate, permit, or other document  
18 equivalent to that which a teacher in other public schools would  
19 be required to hold. These documents shall be maintained on file  
20 at the charter school and are subject to periodic inspection by the  
21 chartering authority. It is the intent of the Legislature that charter  
22 schools be given flexibility with regard to noncore, noncollege  
23 preparatory courses.

24 (m) A charter school shall transmit a copy of its annual,  
25 independent, financial audit report for the preceding fiscal year,  
26 as described in subparagraph (I) of paragraph (5) of subdivision  
27 (b), to its chartering entity, the Controller, the county  
28 superintendent of schools of the county in which the charter  
29 school is sited, unless the county board of education of the  
30 county in which the charter school is sited is the chartering  
31 entity, and the department by December 15 of each year. This  
32 subdivision does not apply if the audit of the charter school is  
33 encompassed in the audit of the chartering entity pursuant to  
34 Section 41020.

35 ~~SEC. 3.~~

36 *SEC. 2.* Section 47612.5 of the Education Code is amended to  
37 read:

38 47612.5. (a) Notwithstanding any other provision of law and  
39 as a condition of apportionment, a charter school shall do all of  
40 the following:

(1) For each fiscal year, offer, at a minimum, the following number of minutes of instruction:

(A) To pupils in kindergarten, 36,000 minutes.

(B) To pupils in grades 1 to 3, inclusive, ~~56,400~~ 50,400 minutes.

(C) To pupils in grades 4 to 8, inclusive, 54,000 minutes.

(D) To pupils in grades 9 to 12, inclusive, 64,800 minutes.

(2) Maintain written contemporaneous records that document all pupil attendance and make these records available for audit and inspection.

(3) Certify that its pupils have participated in the state testing programs specified in Chapter 5 (commencing with Section 60600) of Part 33 in the same manner as other pupils attending public schools as a condition of apportionment of state funding.

(b) Notwithstanding any other provision of law and except to the extent inconsistent with this section and Section 47634.2, a charter school that provides independent study shall comply with Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 and implementing regulations adopted thereunder. The State Board of Education shall adopt regulations that apply this article to charter schools. To the extent that these regulations concern the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (f) of Section 47605.

(c) A reduction in apportionment made pursuant to subdivision (a) shall be proportional to the magnitude of the exception that causes the reduction. For purposes of paragraph (1) of subdivision (a), for each charter school that fails to offer pupils the minimum number of minutes of instruction specified in that paragraph, the Superintendent shall withhold from the charter school's apportionment for average daily attendance of the affected pupils, by grade level, the sum of that apportionment multiplied by the percentage of the minimum number of minutes of instruction at each grade level that the charter school failed to offer.

(d) (1) Notwithstanding any other provision of law and except as provided in paragraph (1) of subdivision (e), a charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made pursuant to Section 47634.2 by the State Board

1 of Education. The determination for funding shall be subject to  
2 any conditions or limitations the State Board of Education may  
3 prescribe. The State Board of Education shall adopt regulations  
4 on or before February 1, 2002, that define and establish general  
5 rules governing nonclassroom-based instruction that apply to all  
6 charter schools and to the process for determining funding of  
7 nonclassroom-based instruction by charter schools offering  
8 nonclassroom-based instruction other than the  
9 nonclassroom-based instruction allowed by paragraph (1) of  
10 subdivision (e). Nonclassroom-based instruction includes, but is  
11 not limited to, independent study, home study, work study, and  
12 distance and computer-based education. In prescribing any  
13 conditions or limitations relating to the qualifications of  
14 instructional personnel, the State Board of Education shall be  
15 guided by subdivision (I) of Section 47605.

16 (2) Except as provided in paragraph (2) of subdivision (b) of  
17 Section 47634.2, a charter school that receives a determination  
18 pursuant to subdivision (b) of Section 47634.2 is not required to  
19 reapply annually for a funding determination of its  
20 nonclassroom-based instruction program if an update of the  
21 information the State Board of Education reviewed when initially  
22 determining funding would not require material revision, as that  
23 term is defined in regulations adopted by the board. A charter  
24 school that has achieved a rank of 6 or greater on the Academic  
25 Performance Index for the two years immediately prior to  
26 receiving a funding determination pursuant to subdivision (b) of  
27 Section 47634.2 shall receive a five-year determination and is not  
28 required to annually reapply for a funding determination of its  
29 nonclassroom-based instruction program if an update of the  
30 information the State Board of Education reviewed when initially  
31 determining funding would not require material revision, as that  
32 term is defined in regulations adopted by the board.  
33 Notwithstanding any provision of law, the State Board of  
34 Education may require a charter school to provide updated  
35 information at any time it determines that a review of that  
36 information is necessary. The State Board of Education may  
37 terminate a determination for funding if updated or additional  
38 information requested by the board is not made available to the  
39 board by the charter school within a reasonable amount of time  
40 or if the information otherwise supports termination. A

1 determination for funding pursuant to Section 47634.2 may not  
2 exceed five years.

3 (3) A charter school that offers nonclassroom-based  
4 instruction in excess of the amount authorized by paragraph (1)  
5 of subdivision (e) is subject to the determination for funding  
6 requirement of Section 47634.2 to receive funding each time its  
7 charter is renewed or materially revised pursuant to Section  
8 47607. A charter school that materially revises its charter to offer  
9 nonclassroom-based instruction in excess of the amount  
10 authorized by paragraph (1) of subdivision (e) is subject to the  
11 determination for funding requirement of Section 47634.2.

12 (e) (1) Notwithstanding any other provision of law, and as a  
13 condition of apportionment, “classroom-based instruction” in a  
14 charter school, for the purposes of this part, occurs only when  
15 charter school pupils are engaged in educational activities  
16 required of those pupils and are under the immediate supervision  
17 and control of an employee of the charter school who possesses a  
18 valid teaching certification in accordance with subdivision (l) of  
19 Section 47605. For purposes of calculating average daily  
20 attendance for classroom-based instruction apportionments, at  
21 least 80 percent of the instructional time offered by the charter  
22 school shall be at the schoolsite, and the charter school shall  
23 require the attendance of all pupils for whom a classroom-based  
24 apportionment is claimed at the schoolsite for at least 80 percent  
25 of the minimum instructional time required to be offered  
26 pursuant to paragraph (1) of subdivision (a) of Section 47612.5.

27 (2) For the purposes of this part, “nonclassroom instruction” or  
28 “nonclassroom-based instruction” means instruction that does not  
29 meet the requirements specified in paragraph (1). The State  
30 Board of Education may adopt regulations pursuant to paragraph  
31 (1) of subdivision (d) specifying other conditions or limitations  
32 on what constitutes nonclassroom-based instruction, as it deems  
33 appropriate and consistent with this part.

34 (3) For purposes of this part, a schoolsite is a facility that is  
35 used principally for classroom instruction.

36 (4) Notwithstanding any other provision of law, neither the  
37 State Board of Education, nor the Superintendent may waive the  
38 requirements of paragraph (1) of subdivision (a).

39 ~~SEC. 4. Section 47612.6 is added to the Education Code, to~~  
40 ~~read:~~

1 ~~47612.6. (a) For fiscal penalties incurred as a result of~~  
2 ~~providing insufficient instructional minutes in the 2001-02 fiscal~~  
3 ~~year, or any preceding fiscal year, the State Board of Education~~  
4 ~~may waive subdivision (c) of Section 47612.5.~~

5 ~~(b) (1) For fiscal penalties incurred as a result of providing~~  
6 ~~insufficient instructional minutes in the 2002-03 fiscal year, or~~  
7 ~~any subsequent fiscal year, the State Board of Education may~~  
8 ~~waive subdivision (c) of Section 47612.5 only if that charter~~  
9 ~~school agrees to maintain minutes of instruction equal to the~~  
10 ~~minimum number of minutes required in paragraph (1) of~~  
11 ~~subdivision (a) of Section 47612.2 and to increase those minutes~~  
12 ~~of instruction by the percentage of the minimum number of~~  
13 ~~minutes of instruction at each grade level that the charter school~~  
14 ~~failed to offer for twice the number of fiscal years that it failed to~~  
15 ~~comply with paragraph (1) of subdivision (a) of Section 47612.2.~~

16 ~~(2) Compliance with paragraph (1) shall be verified in the~~  
17 ~~report of the annual audit of the charter school for each fiscal~~  
18 ~~year in which it is required to maintain additional time pursuant~~  
19 ~~to paragraph (1). If the audit report does not comply with this~~  
20 ~~paragraph, the waiver granted pursuant to subdivision (b) shall be~~  
21 ~~revoked and the charter school shall repay the amount of~~  
22 ~~apportionments that would have been reduced pursuant to~~  
23 ~~subdivision (c) of Section 47612.5, in accordance with Section~~  
24 ~~41344.~~

25 ~~(c) It is the intent of the Legislature that charter schools make~~  
26 ~~up lost instructional minutes during the fiscal year in which the~~  
27 ~~loss occurred rather than seek a waiver under this section.~~

28 *SEC. 3. Section 47612.6 is added to the Education Code, to*  
29 *read:*

30 *47612.6. (a) The State Board of Education may waive fiscal*  
31 *penalties calculated pursuant to subdivision (c) of Section*  
32 *47612.5 for a charter school that fails to offer the minimum*  
33 *number of instructional minutes required pursuant to subdivision*  
34 *(a) of Section 47612.5 for the fiscal year.*

35 *(b) For fiscal penalties incurred as a result of providing*  
36 *insufficient instructional minutes in the 2002-03 fiscal year, or*  
37 *any fiscal year thereafter, the State Board of Education may*  
38 *grant a waiver only upon the condition that the charter school*  
39 *agrees to maintain minutes of instruction equal to those minutes*  
40 *of instruction it failed to offer and the minimum number of*

1 *instructional minutes required pursuant to subdivision (a) of*  
2 *Section 47612.5 for twice the number of years that it failed to*  
3 *maintain the required minimum number of instructional minutes*  
4 *for the fiscal year. Compliance with the condition shall*  
5 *commence no later than the school year following the fiscal year*  
6 *that the waiver was granted and shall continue for each*  
7 *subsequent school year until the condition is satisfied.*

8 *(c) Compliance with the condition set forth in subdivision (b)*  
9 *shall be verified in the report of the annual audit of the charter*  
10 *school for each fiscal year in which it is required to maintain*  
11 *additional time pursuant to subdivision (b). If the audit report for*  
12 *a year in which the additional time is required to be maintained*  
13 *does not verify that the additional time was provided, the waiver*  
14 *granted pursuant to subdivision (b) shall be revoked and the*  
15 *charter school shall repay the fiscal penalty calculated pursuant*  
16 *to subdivision (c) of Section 47612.5, in accordance with*  
17 *subdivision (a) of Section 41344.*

18 *(d) It is the intent of the Legislature that charter schools make*  
19 *every effort to make up any instructional minutes lost during the*  
20 *fiscal year in which the loss occurred rather than seek a waiver*  
21 *pursuant to this section.*

22 ~~SEC. 5.~~

23 *SEC. 4.* If the Commission on State Mandates determines that  
24 this act contains costs mandated by the state, reimbursement to  
25 local agencies and school districts for those costs shall be made  
26 pursuant to Part 7 (commencing with Section 17500) of Division  
27 4 of Title 2 of the Government Code.